

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL)
RESPONSIBILITY,)
2000 P Street NW, Suite 240)
Washington, D.C. 20036)

Plaintiff,)

v.)

Civil Action #

U. S. DEPARTMENT OF THE INTERIOR)
Office of Inspector General)
1849 C Street, NW)
Washington, DC 20240)

Defendant.)

COMPLAINT

PRELIMINARY STATEMENT

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the U.S. Department of the Interior Office of Inspector General (OIG) to disclose records withheld wrongfully after a FOIA request and subsequent appeal from Plaintiff. FOIA requires that federal agencies respond to public requests for documents, including files maintained electronically, in order to increase public understanding of the workings of government and access to government information.

2. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested the subject records for the purpose of investigating health and safety problems within the Department of the Interior (DOI). The requested information will help the public understand the management of health and safety issues within public agencies, especially as it relates to preventable hazards. The disclosure of specific examples of health and safety problems identified by OIG will offer the general public information about actions taken (or not taken) by high-level managers, including appointed officials, in addressing the problems. The public trust is well served by knowing whether this malfeasance is jeopardizing public servants’ health and safety.
3. Plaintiff submitted a FOIA request to OIG dated January 9, 2008 (OIG FOIA # 08-FOI-00023). By letter dated February 5, 2008 (*see* attachment pp. 1-2), OIG acknowledged receipt of Plaintiff’s FOIA request and granted Plaintiff’s request for a fee waiver and indicated that Plaintiff was free to appeal if OIG could not respond to the request within the established time limits. On March 24, 2008, Plaintiff appealed the constructive denial of its FOIA request. The DOI FOIA Appeals Officer acknowledged the appeal by letter dated May 06, 2008 (*see* attachment p. 3). By letter dated August 5, 2008 (*see* attachment pp. 4-5), the Appeals Officer informed Plaintiff that OIG had not responded to Plaintiff’s request within the required 20 days due to various factors and notified Plaintiff of the

right to seek judicial review. The Appeals Officer also, by copy of his August 5, 2008 letter, directed the OIG to issue a response to Plaintiff “as soon as possible.”

4. In its August 5, 2008 letter, the Appeals Officer also asked if Plaintiff would delay filing a lawsuit. In a show of good faith, Plaintiff has delayed filing suit and OIG has had ample time beyond that legally required to respond to Plaintiff’s FOIA request and subsequent appeal. It has been well over five (5) months since the Appeals Officer directed OIG to respond to Plaintiff’s appeal, yet Plaintiff still awaits a response.
5. OIG’s conduct is arbitrary and capricious and amounts to a denial of Plaintiff’s FOIA request. OIG’s conduct frustrates Plaintiff’s efforts to educate the public regarding health and safety problems within DOI and is a violation of the FOIA.
6. Plaintiff seeks a court order requiring OIG to immediately produce the documents sought in the January 9, 2008 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction).
8. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
9. This Court has the authority to award costs and attorneys’ fees under 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).

10. Venue is properly vested in this Court under 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff PEER is a non-profit public interest organization, with its main office located Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, Arizona, and Tennessee.
12. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues, focusing on the environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.
13. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's web site www.peer.org, which draws between 1,000 and 10,000 viewers per day, and PEER's newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
14. Defendant OIG is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession

consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of federal law.

FACTS

15. On January 9, 2008, Plaintiff filed a FOIA request, seeking agency records. OIG later designated this request OIG FOIA # 08-FI-00023.
16. Plaintiff's OIG FOIA # 08-FI-00023 sought the following records: (1) Results of surveys conducted by OIG of DOI employees concerning health and safety matters, (2) Any assessment of health and safety problems identified by DOI employees, (3) Correspondence, documentary materials, letters, or other communications concerning the modernization of the Main DOI Headquarters Building complex, and (4) Interview notes by OIG staff from interviews with DOI employees concerning hazards or unhealthful conditions. PEER also asked for a Vaughn Index itemizing and describing any documents or portions of documents withheld.
17. OIG acknowledged receipt of Plaintiff's FOIA request in a letter dated February 5, 2008 (*see* attached pp. 1-2) and granted Plaintiff's fee waiver request. In that same letter, OIG stated that if it could not respond within FOIA-mandated time limits, *see* 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff was free to appeal for non-response.
18. By letter dated March 24, 2008, Plaintiff filed an administrative appeal of OIG's constructive denial of Plaintiff's FOIA request, citing Defendant's inordinate delay and ultimate lack of response.

19. The Department of the Interior FOIA Appeals Officer acknowledged receipt of Plaintiff's appeal in a letter dated May 6, 2008 (*see* attached p. 3).
20. In the May 6, 2008 letter, the Appeals Officer acknowledged that DOI had failed to meet the twenty (20) day limit for responding to Plaintiff's appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii). The Officer advised Plaintiff of the right to seek judicial review under 5 U.S.C. § 552(a)(4)(B), but also stated "we hope that you will delay filing a lawsuit so that the Department can thoroughly review the issues in your appeal and make a determination."
21. By letter dated August 5, 2008 (*see* attached pp. 4-5), the Appeals Officer informed Plaintiff that OIG had not responded to Plaintiff's request within the required twenty (20) day period due to various factors, including delay allegedly caused by OIG personnel having to respond to another PEER FOIA request, and informed Plaintiff of their right to seek judicial review. By copy of that same letter, the Officer directed OIG to respond to Plaintiff's request "as soon as possible."
22. OIG did not adequately respond to Plaintiff's March 24, 2008 appeal, nor did it provide the requested documents. In so doing, OIG failed to meet the twenty (20) day limit FOIA imposes for responding to an appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).
23. In a show of good faith, Plaintiff has allowed OIG substantial time beyond that legally required to respond to its FOIA request and subsequent appeal. It has not been almost one year since Plaintiff initiated its January 9, 2008 FOIA request, and it has been over

five (5) months since Defendant was specifically directed to respond to Plaintiff's appeal, yet Plaintiff still awaits a cogent response.

24. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C), and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

CAUSES OF ACTION

Count I: Violation of the Freedom of Information Act

25. Plaintiff repeats the allegations in paragraphs 1 through 24.
26. OIG's failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency's own regulations promulgated thereunder.

Count II: Violation of the Administrative Procedure Act

27. Plaintiff repeats the allegations in paragraphs 1 through 24.
28. OIG's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. OIG's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that OIG has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing OIG to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until OIG is in compliance with FOIA, APA and every order of this Court;
- iv. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: Washington, D.C.
January 5, 2009

Respectfully submitted,

/s/ Paula Dinerstein
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Attachment